Supreme Court, U.S.
FILED

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No. _____

OFFICE OF THE CLERK

In the
Supreme Court of the United States

Bryan County Board of Equalization,

Petitioners,

v.

Bryan County Board of Tax Assessors,

Respondent.

On Petition for Writ of Certiorari
To the Supreme Court
Of the State of Georgia

Petition for Writ of Certiorari

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9 pp

QUESTION PRESENTED

1. Is a Georgia Board of Equalization exempt from the Georgia Sunshine Law while it deliberates on a tax appeal case presented to it?

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PETITION FOR WRIT OF CERTIORARI

The Bryan County Board of Equalization, a Georgia Board of Equalization created pursuant to a statute of the State of Georgia, O.C.G.A. § 48-5-311, appendix pages 1-22, petitions the Court for the Writ of Certiorari, to review a final decision of the Court of Last Resort in the State of Georgia, the Georgia Supreme Court.

OPINION BELOW

Petitioners timely moved for Certiorari in the Georgia Supreme Court, which was denied, with all Justices concurring on June 10, 2002 in an Order reported at 2002 Ga. LEXIS 496, appendix page 34. Petitioners thereafter moved for Reconsideration, which was denied by the Georgia Supreme Court on July 12, 2002 in an unpublished opinion, with one (1) Justice dissenting, appendix page 35.

JURISDICTION

Petitioners request that this Court exercise its discretion in hearing this appeal because a State

Court of Last Resort has decided a question in a manner that conflicts with the right of a jury to conduct its deliberations in a closed and private setting, thereby threatening the backbone of our jurisprudence.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED IN THIS CASE

The Georgia Sunshine Law, O.C.G.A. § 50-14-1, appendix pages 36-41, the Statutory Exemptions, O.C.G.A. § 50-14-3, appendix pages 42-44, and the Georgia Statute creating Boards of Equalization, O.C.G.A. § 48-5-311, appendix pages 1-22.

STATEMENT OF THE CASE

The Bryan County Board of Equalization heard a tax appeal involving the valuation of the property of a taxpayer for ad valorem tax purposes. The Board heard all of the evidence and argument of the parties in an open hearing, and thereafter, conducted its deliberations in private, as a jury, and then published it decision. The local Board of Tax Assessors took the position that under Georgia's Sunshine Law, the Board was required to conduct even its deliberations and voting in public, and thereafter moved for injunction in the Bryan County

Superior Court, ultimately resulting in the decision for which Certiorari is sought.

ARGUMENT

The position of the Petitioner is that the right of a jury to deliberate in private is shared by the Board of Equalization when it is deciding a tax appeal. Petitioner urges that this right should be recognized because the quasi judicial capacity of a Board of Equalization has been recognized by the State of Georgia, see Grand Partners Joint Venture I v. RealTax Resource, Inc., 225 Ga.App. 409, 483 S.E.2d 922 (1997). Further, the Georgia Courts have recognized the authority of Boards of Equalization to fashion a remedy in tax appeals before them, see Bouy v. Kiley, 238 Ga. 47, 230 S.E.2d 861 (1976). However, despite these holdings, the State Courts now demand that these judicial functions be performed in the very presence of the litigants whose fate the Board must decide. The Courts appear to base this decision around the fact that the exemptions provision of the Georgia Sunshine Law does not contain a specific statutory provision for a

Board of Equalization, and refuse to create a judicial exemption for the Boards. And, the Court persist in this position despite the fact that the Georgia Supreme Court gave almost identical protections to a student Court at the University of Georgia, see Red & Black Publishing Company, Inc., et al. v. Board of Regents, et al., 262 Ga. 848, 427 S.E.2d 257 (1993).

Thus, in Georgia, Boards of Equalization are being compelled to deliberate and vote in the very presence of those whose fate they must decide. While admittedly this is a question only concerning Georgia, the Court is asked to look deeper. Among several states, the authority appears to be split. In a majority of the states, there are indeed similar Boards deciding similar questions, and there appears to be no definite pattern among the states as to the recognition of their quasi judicial capacity. Thus, the significance of the problem is two fold: there should be a clear cut directive, that only this Court can issue, protecting the integrity of such quasi judicial bodies nationwide, and nothing should be allowed to erode away the privileges of jurors in our land.

CONCLUSION

Petitioners respectfully pray that the Court grant this, its Petition for Writ of Certiorari, and ultimately grant relief accordingly.

Respectfully submitted,

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Appendix to Petition for Writ of Certiorari

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* THIS DOCUMENT IS CURRENT THROUGH THE 2002 REGULAR LEGISLATIVE SESSION *

TITLE 48. REVENUE AND TAXATION
CHAPTER 5. AD VALOREM TAXATION OF PROPERTY
ARTICLE 5. UNIFORM PROPERTY TAX ADMINISTRATION AND EQUALIZATION
PART 2. COUNTY BOARDS OF TAX ASSESSORS

GO TO CODE ARCHIVE DIRECTORY FOR THIS JURISDICTION

O.C.G.A. § 48-5-311 (2002)

§ 48-5-311. Creation of county boards of equalization; duties; review of assessments; appeals

(a) *Establishment.*

(1) There is established in each county of the state a county board of equalization to consist of three members and three alternate members appointed in the manner and for the term set forth in this Code section. In those counties having more than 10,000 parcels of real property, the county governing authority, by appropriate resolution adopted on or before November 1 of each year, may elect to have selected one additional county board of equalization for each 10,000 parcels of real property in the county or for any part of a number of parcels in the county exceeding 10,000 parcels.

(2) Notwithstanding any part of this subsection to the contrary, at any time the governing authority of a county makes a request to the grand jury of the

county for additional alternate members of boards of equalization, the grand jury shall appoint the number of alternate members so requested to each board of equalization, such number not to exceed a maximum of 21 alternate members for each of the boards. The alternate members of the boards shall be duly qualified and authorized to serve on any of the boards of equalization of the county. The grand jury of any such county may designate a chairperson and two vice chairpersons of each such board of equalization. The chairperson and vice chairpersons shall be vested with full administrative authority in calling and conducting the business of the board. Any combination of members or alternate members of any such board of equalization of the county shall be competent to exercise the power and authority of the board. Any person designated as an alternate member of any such board of equalization of the county shall be competent to serve in such capacity as provided in this Code section upon appointment and taking of oath.

(3) Notwithstanding any provision of this subsection to the contrary, in any county of this state having a population of 400,000 or more according to the United States decennial census of 1990 or any future such census, the governing authority of the county, by appropriate resolution adopted on or before November 1 of each year, may elect to have selected one additional county board of equalization for each 10,000 parcels of real property in the county or for any part of a number of parcels in the county exceeding 10,000 parcels. In addition to the foregoing, any two members of a county board of equalization of the county may decide an appeal from an assessment, notwithstanding any other provisions of this Code section. The decision shall be in writing and signed by at least two members of the board of equalization; and, except for the number of members necessary to decide an appeal, the decision shall conform to the requirements of this Code section.

(4) Reserved.

(b) *Qualifications.*

(1) Each person who is, in the judgment of the appointing grand jury, qualified and competent to serve as a grand juror, who is the owner of real property, and who is at least a high school graduate shall be qualified, competent, and compellable to serve as a member or alternate member of the county board of equalization. No member of the governing authority of a county, municipality, or consolidated government; member of a county or independent board of education; member of the county board of tax assessors; employee of the county board of tax assessors; or county tax appraiser shall be competent to serve as a member or alternate member of the county board of equalization.

(2)(A) Within the first year after a member's initial appointment to the board of equalization on or after January 1, 1981, each member shall satisfactorily complete not less than 40 hours of instruction in appraisal and equalization processes and procedures, as prepared and required by the commissioner. The failure of any member to fulfill the requirements of this subparagraph shall render that member ineligible to serve on the board; and the vacancy created thereby shall be filled in the same manner as other vacancies on the board are filled.

(B) No person shall be eligible to hear an appeal as a member of a board of equalization on or after January 1, 1995, unless prior to hearing such appeal, that person shall satisfactorily complete the 40 hours of instruction in appraisal and equalization processes and procedures required under subparagraph (A) of this paragraph. Any person appointed to such board shall be required to complete annually a continuing education

requirement of at least eight hours of instruction in appraisal and equalization procedures, as prepared and required by the commissioner. The failure of any member to fulfill the requirements of this subparagraph shall render that member ineligible to serve on the board; and the vacancy created thereby shall be filled in the same manner as other vacancies on the board are filled.

(c) *Appointment.*

(1) Except as provided in paragraph (2) of this subsection, each member and alternate member of the county board of equalization shall be appointed for a term of three calendar years next succeeding the date of such member or such alternate member's selection. Each term shall begin on January 1.

(2) The grand jury in each county at any term of court preceding November 1 of 1991 shall select three persons who are otherwise qualified to serve as members of the county board of equalization and shall also select three persons who are otherwise qualified to serve as alternate members of the county board of equalization. The three individuals selected as alternates shall be designated as alternate one, alternate two, and alternate three, with the most recent appointee being alternate number three, the next most recent appointee being alternate number two, and the most senior appointee being alternate number one. One member and one alternate shall be appointed for terms of one year, one member and one alternate shall be appointed for two years, and one member and one alternate shall be appointed for three years. Each year thereafter, the grand jury of each county shall select one member and one alternate for three-year terms.

(3) If a vacancy occurs on the county board of equalization, the individual designated as alternate one shall then serve as a member of the board of

equalization for the unexpired term. If a vacancy occurs among the alternate members, the grand jury then in session or the next grand jury shall select an individual who is otherwise qualified to serve as an alternate member of the county board of equalization for the unexpired term. The individual so selected shall become alternate member three, and the other two alternates shall be redesignated appropriately.

(4) Within five days after the names of the members and alternate members of the county board or boards of equalization have been selected, the clerk of the superior court shall issue and deliver to the sheriff or deputy sheriff a precept containing the names of the persons so selected. Within ten days of receiving the precept, the sheriff or deputy sheriff shall cause the persons whose names are written on the precept to be served personally or by leaving the summons at their place of residence. The summons shall direct the persons named on the summons to appear before the clerk of the superior court on a date specified in the summons, which date shall not be later than December 15.

(5) Each member and alternate member of the county board of equalization, on the date prescribed for appearance before the clerk of the superior court and before entering on the discharge of such member and alternate member's duties, shall take and subscribe before the clerk of the superior court the following oath:
"You shall faithfully and impartially discharge the duty of members and alternate members of the board of equalization for the County of , in accordance with the Constitution and laws of this state, to the best of your skill and knowledge. So help you God."

In addition to the oath of office prescribed in this paragraph, the judge of the superior court shall charge each member and alternate member of the

county board of equalization with the law and duties relating to such office.

(d) *Duties and powers.*

(1) The county board of equalization shall hear and determine appeals from assessments and denials of homestead exemptions as provided in subsection (e) of this Code section.
(2) If in the course of determining an appeal the county board of equalization finds reason to believe that the property involved in an appeal or the class of property in which is included the property involved in an appeal is not uniformly assessed with other property included in the digest, the board shall request the respective parties to the appeal to present relevant information with respect to that question. If the board determines that uniformity is not present, the board may order the county board of tax assessors to take such action as is necessary to obtain uniformity, except that, when a question of county-wide uniformity is considered by the board, the board may order a partial or total county-wide revaluation only upon a determination by a majority of all the members of the board that the clear and convincing weight of the evidence requires such action. The board of equalization may act pursuant to this paragraph whether or not the appellant has raised the issue of uniformity.

(3) The board shall establish by regulation procedures, not in conflict with the regulations promulgated by the commissioner pursuant to subparagraph (e)(5)(B) of this Code section, for the conducting of appeals before the board. The procedures shall be entered into the minutes of the board and a copy of the procedures shall be made available to any individual upon request.

(e) *Appeal.*
(1)(A) Any resident or nonresident taxpayer may appeal from an assessment by the county board of

tax assessors to the county board of equalization or to an arbitrator or arbitrators as to matters of taxability, uniformity of assessment, and value, and, for residents, as to denials of homestead exemptions.

(B) In addition to the grounds enumerated in subparagraph (A) of this paragraph, any resident or nonresident taxpayer having property that is located within a municipality, the boundaries of which municipality extend into more than one county, may also appeal from an assessment on such property by the county board of tax assessors to the county board of equalization or to an arbitrator or arbitrators as to matters of uniformity of assessment of their property with other properties located within such municipality, and any uniformity adjustments to the assessment that may result from such appeal shall only apply for municipal ad valorem tax purposes.

(C) Appeals to the county board of equalization shall be conducted in the manner provided in paragraph (2) of this subsection. Appeals to an arbitrator or arbitrators shall be conducted in the manner specified in subsection (f) of this Code section. Such appeal proceedings shall be conducted between the hours of 8:00 A.M. and 7:00 P.M. on a business day. Following the notification of the taxpayer of the date and time of their scheduled hearing, the taxpayer shall be authorized to exercise a one-time option of changing the date and time of the taxpayer's scheduled hearing to a day and time acceptable to the taxpayer.

(2)(A) An appeal shall be effected by mailing to or filing with the county board of tax assessors a notice of appeal within 45 days from the date of mailing the notice pursuant to Code Section 48-5-306 except that for counties or municipal corporations providing for the collection and payment of ad valorem taxes in installments the time for filing the notice of appeal shall be 30 days. A written objection

to an assessment of real property received by a county board of tax assessors stating the location of the real property and the identification number, if any, contained in the tax notice shall be deemed a notice of appeal by the taxpayer under the grounds listed in paragraph (1) of this subsection. Any such notice of appeal which is mailed pursuant to this subparagraph shall be deemed to be filed as of the date of the United States Postal Service postmark on such notice of appeal. A written objection to an assessment of personal property received by a county board of tax assessors giving the account number, if any, contained in the tax notice and stating that the objection is to an assessment of personal property shall be deemed a notice of appeal by the taxpayer under the grounds listed in paragraph (1) of this subsection. The county board of tax assessors shall review the valuation or denial in question and, if any changes or corrections are made in the valuation or decision in question, the board shall send a notice of the changes or corrections to the taxpayer pursuant to Code Section 48-5-306. Such notice shall also explain the taxpayer's right to appeal to the county board of equalization as provided in subparagraph (C) of this paragraph if the taxpayer is dissatisfied with the changes or corrections made by the county board of tax assessors.

(B) If no changes or corrections are made in the valuation or decision, the county board of tax assessors shall send written notice thereof to the taxpayer and to the county board of equalization which notice shall also constitute the taxpayer's appeal to the county board of equalization without the necessity of the taxpayer's filing any additional notice of appeal to the county board of tax assessors or to the county board of equalization. The county board of tax assessors shall also send or deliver all necessary papers to the county board of equalization.

(C) If changes or corrections are made by the county board of tax assessors, the board shall notify the taxpayer in writing of such changes. If the taxpayer is dissatisfied with such changes or corrections, the taxpayer shall, within 21 days of the date of mailing of the change notice, institute an appeal to the county board of equalization by mailing to or filing with the county board of tax assessors a written notice of appeal. Any such notice of appeal which is mailed pursuant to this subparagraph shall be deemed to be filed as of the date of the United States Postal Service postmark on such notice of appeal. The county board of tax assessors shall send or deliver the notice of appeal and all necessary papers to the county board of equalization.

(D) The written notice to the taxpayer required by this paragraph shall contain a statement of the grounds for rejection of any position the taxpayer has asserted with regard to the valuation of the property. No addition to or amendment of such grounds as to such position shall be permitted before the county board of equalization or in any arbitration proceedings.

(3) In any year in which no county-wide revaluation is implemented, the county board of tax assessors shall make its determination and notify the taxpayer within 180 days after receipt of the taxpayer's notice of appeal. If the county board of tax assessors fails to respond to the taxpayer within such 180 day period during such year, the appeal shall be automatically referred to the county board of equalization. This paragraph shall not apply to any county whose digest for the current year cannot be approved by the commissioner pursuant to subsection (a) of Code Section 48-5-304.

(4) The determination by the county board of tax assessors of questions of factual characteristics of the property under appeal, as opposed to questions of value, shall be prima-facie correct in any appeal

to the county board of equalization. However, the board of tax assessors shall have the burden of proving their opinions of value and the validity of their proposed assessment by a preponderance of evidence.

(5)(A) The county board of equalization shall determine all questions presented to it on the basis of the best information available to the board.

(B) The commissioner, by regulation, may adopt uniform procedures and standards which, when approved by the State Board of Equalization, shall be followed by county boards of equalization in determining appeals.

(6)(A) Within 15 days of the receipt of the notice of appeal, the county board of equalization shall set a date for a hearing on the questions presented and shall so notify the taxpayer and the county board of tax assessors in writing. A taxpayer may appear before the board concerning any appeal in person, by his or her authorized agent or representative, or both. The taxpayer shall specify in writing to the board the name of any such agent or representative prior to any appearance by the agent or representative before the board.

(B) Within 30 days of the date of notification to the taxpayer of the hearing required in this paragraph but not earlier than 20 days from the date of such notification to the taxpayer, the county board of equalization shall hold such hearing to determine the questions presented.

(C) If more than one contiguous property of a taxpayer is under appeal, the board of equalization shall, upon request of the taxpayer, consolidate all such appeals in one hearing and render separate decisions as to each parcel or item of property. Any appeal from such a consolidated board of equalization hearing to the superior court as provided in this subsection shall constitute a single civil action, and, unless the taxpayer specifically so

indicates in his or her notice of appeal, shall apply to all such parcels or items of property.
(D)(i) The decision of the county board of equalization shall be in writing, shall be signed by each member of the board, shall specifically decide each question presented by the appeal, shall specify the reason or reasons for each such decision as to the specific issues of taxability, uniformity of assessment, value, or denial of homestead exemptions depending upon the specific issue or issues raised by the taxpayer in the course of such taxpayer's appeal, shall state that with respect to the appeal no member of the board is disqualified from acting by virtue of subsection (j) of this Code section, and shall certify the date on which notice of the decision is given to the parties. Notice of the decision shall be given to each party by sending a copy of the decision by registered or certified mail or statutory overnight delivery to the appellant and by filing the original copy of the decision with the county board of tax assessors. Each of the three members of the county board of equalization must be present and must participate in the deliberations on any appeal. A majority vote shall be required in any matter. All three members of the board must sign the decision indicating their vote.

(ii) Except as otherwise provided in subparagraph (g)(4)(B) of this Code section, the county board of tax assessors shall use the valuation of the county board of equalization in compiling the tax digest for the county for the year in question and shall indicate such valuation as the previous year's value on the property tax notice of assessment of such taxpayer for the immediately following year rather than substituting the valuation which was changed by the county board of equalization.
(iii)(I) If the county's tax bills are issued before the county board of equalization has rendered its decision on property which is on appeal, the county board of tax assessors shall specify to the county tax commissioner the higher of the taxpayer's return

valuation or 85 percent of the current year's valuation as set by the county board of tax assessors. This amount shall be the basis for a temporary tax bill to be issued. Such tax bill shall be accompanied by a notice to the taxpayer that the bill is a temporary tax bill pending the outcome of the appeal process. Such notice shall also indicate that upon resolution of the appeal, there may be additional taxes due or a refund issued.

(II) If the final determination of the value on appeal is less than the valuation thus used, the taxpayer shall receive a deduction in such taxpayer's taxes for the year in question. Such deduction shall be refunded to the taxpayer and shall include interest on the amount of such deduction at the same rate as specified in Code Section 48-2-35 which shall accrue from November 15 of the taxable year in question or the date the final installment of the tax was due or was paid, whichever is later. In no event shall the amount of such interest exceed $150.00.

(III) If the final determination of value on appeal is greater than the valuation thus used, the taxpayer shall be liable for the increase in taxes for the year in question due to the increased valuation fixed on appeal with interest at the rate as specified in Code Section 48-2-35. Such interest shall accrue from November 15 of the taxable year in question or the date the final installment of the tax was due to the date the additional taxes are remitted, but in no event shall such interest accrue for a period of more than 180 days. Any taxpayer shall be exempt each taxable year from any such interest owed under this subdivision with respect to such taxpayer's homestead property.

(7) The county governing authority shall furnish the county board of equalization necessary facilities and secretarial and clerical help. The secretary of the county board of tax assessors shall see that the records and information of the county board of tax

assessors are transmitted to the county board of equalization. The county board of equalization must consider in the performance of its duties the information furnished by the county board of tax assessors and the taxpayer.

(8) The taxpayer or his or her agent or representative may submit in support of his or her appeal the most current report of the sales ratio study for the county conducted pursuant to Code Section 48-5-274. The board must consider the study upon any such request.

(f) *Arbitration.*

(1) At the option of the taxpayer an appeal shall be submitted to arbitration.

(2) Following an election by the taxpayer under paragraph (1) of this subsection, an arbitration appeal shall be effected by the taxpayer's filing a written notice of arbitration with the county board of tax assessors. The notice of arbitration shall specifically state the grounds for arbitration. The notice shall be filed within 45 days from the date of mailing the notice pursuant to Code Section 48-5-306 except that for counties or municipal corporations providing for the collection and payment of ad valorem taxes in installments the time for filing the notice of appeal shall be 30 days. The county board of tax assessors shall certify to the clerk of the superior court the notice of arbitration and any other papers specified by the person seeking arbitration including, but not limited to, the staff information from the file used by the county board of tax assessors. All papers and information certified to the clerk shall become a part of the record on arbitration. Within 15 days of the filing of the certification to the clerk of the superior court, the judge shall issue an order authorizing the arbitration and appointing a referee.

(3) The arbitration of the correctness of the decision of the county board of tax assessors shall be conducted pursuant to the procedures outlined in Article 2 of Chapter 9 of Title 9 with the following exceptions:

(A) If both parties agree, the matter may be submitted to a single arbitrator. If both parties agree, the referee may serve as the single arbitrator;

(B) If the parties do not agree to a single arbitrator, then three arbitrators shall hear the appeal. Such arbitrators shall be appointed as provided in Code Section 9-9-67. If one or both parties are unable to select an arbitrator, the appeal shall be heard by a single arbitrator who shall be appointed by the judge of the superior court as provided in Code Section 9-9-67;

(C) In order to be qualified to serve as an arbitrator, a person must be at least a registered real estate appraiser as classified by the Georgia Real Estate Appraisers Board;

(D) The arbitrator or a majority of the arbitrators, as applicable, within 30 days after their appointment shall render a decision regarding the correctness of the decision of the county board of tax assessors and, if correction of the decision is required, regarding the extent and manner in which the decision should be corrected. The decision of the arbitrator or arbitrators, as applicable, may be appealed to the superior court in the same manner as a decision of the board of equalization;

(E) The taxpayer shall be responsible for the fees and costs of such taxpayer's arbitrator and the county shall be responsible for the fees and costs of such county's arbitrator. The two parties shall each be responsible for one-half of the fees and costs of the third arbitrator. In the event the appeal is submitted to a single arbitrator, the two parties shall

each be responsible for one-half of the fees and costs of such arbitrator; and

(F) The board of tax assessors shall have the burden of proving their opinions of value and the validity of their proposed assessment by a preponderance of evidence.

(g) *Appeals to the superior court.*

(1) The taxpayer or, except as otherwise provided in this paragraph, the county board of tax assessors may appeal decisions of the county board of equalization, the arbitrator, or the arbitrators, as applicable, to the superior court of the county in which the property lies. A county board of tax assessors may not appeal a decision of the county board of equalization changing an assessment by 15 percent or less unless the board of tax assessors gives the county governing authority a written notice of its intention to appeal and within ten days of receipt of the notice the county governing authority by majority vote does not prohibit the appeal. In the case of a joint city-county board of tax assessors, such notice shall be given to the city and county governing authorities, either of which may prohibit the appeal by majority vote within the allowed period of time.

(2) An appeal by the taxpayer as provided in paragraph (1) of this subsection shall be effected by mailing to or filing with the county board of tax assessors a written notice of appeal. Any such notice of appeal which is mailed pursuant to this paragraph shall be deemed to be filed as of the date of the United States Postal Service postmark on such notice of appeal. An appeal by the county board of tax assessors shall be effected by giving notice to the taxpayer. The notice to the taxpayer shall be dated and shall contain the name and the last known address of the taxpayer. The notice of appeal shall specifically state the grounds for appeal. The notice

shall be mailed or filed within 30 days from the date on which the decision of the county board of equalization is mailed pursuant to subparagraph (e)(6)(D) of this Code section or within 30 days from the date on which the arbitration decision is rendered pursuant to subparagraph (f)(3)(D) of this Code section, whichever is applicable. The county board of tax assessors shall certify to the clerk of the superior court the notice of appeal and any other papers specified by the person appealing including, but not limited to, the staff information from the file used by either the county board of tax assessors or the county board of equalization. All papers and information certified to the clerk shall become a part of the record on appeal to the superior court. At the time of certification of the appeal, the county board of tax assessors shall serve the taxpayer or his or her attorney or agent of record with a copy of the notice of appeal and with the civil action file number assigned to the appeal. Such service shall be effected in accordance with subsection (b) of Code Section 9-11-5. No discovery, motions, or other pleadings may be filed by the county board of tax assessors in the appeal until such service has been made.

(3) The appeal shall constitute a de novo action. The board of tax assessors shall have the burden of proving their opinions of value and the validity of their proposed assessment by a preponderance of evidence. Upon a failure of the board of tax assessors to meet such burden of proof, the court may, upon motion or sua sponte, authorize the finding that the value asserted by the taxpayer is unreasonable and authorize the determination of the final value of the property.

(4)(A) The appeal shall be heard before a jury at the first term following the filing of the appeal unless continued by the court upon a showing of good cause. If only questions of law are presented in the appeal, the appeal shall be heard as soon as practicable before the court sitting without a jury. Each hearing before the court sitting without a jury

shall be held within 40 days following the date on which the appeal is filed with the clerk of the superior court. The time of any hearing shall be set in consultation with the taxpayer and at a time acceptable to the taxpayer between the hours of 8:00 A.M. and 7:00 P.M. on a business day.

(B)(i) The county board of tax assessors shall use the valuation of the county board of equalization in compiling the tax digest for the county. If the final determination of value on appeal is less than the valuation set by the county board of equalization, the arbitrator, or the arbitrators, as applicable, the taxpayer shall receive a deduction in such taxpayer's taxes for the year in question. Such deduction shall be refunded to the taxpayer and shall include interest on the amount of such deduction at the same rate as specified in Code Section 48-2-35 which shall accrue from November 15 of the taxable year in question or the date the final installment of the tax was due or was paid, whichever is later. In no event shall the amount of such interest exceed $150.00.

(ii) If the final determination of value on appeal is 80 percent or less of the valuation set by the county board of equalization as to commercial property, or 85 percent or less of the valuation set by the county board of equalization as to other property, the taxpayer, in addition to the interest provided for by this paragraph, shall recover costs of litigation and reasonable attorney's fees incurred in the action. This division shall not apply when the property owner has failed to return for taxation the property that is under appeal.

(iii) If the final determination of value on appeal is greater than the valuation set by the county board of equalization, the arbitrator, or the arbitrators, as applicable, the taxpayer shall be liable for the increase in taxes for the year in question due to the increased valuation fixed on appeal with interest at the same rate as specified in Code Section 48-2-35.

Such interest shall accrue from November 15 of the taxable year in question or the date the final installment of tax was due to the date the additional taxes are remitted, but in no event shall such interest accrue for a period of more than 180 days. Any taxpayer shall be exempt each taxable year from any such interest owed under this subparagraph with respect to such taxpayer's homestead property.

(h) In the course of any assessment, appeal, or arbitration, or any related proceeding, the taxpayer shall be entitled to make audio recordings of any interview with any officer or employee of the taxing authority relating to the valuation of the taxpayer's property subject to such assessment, appeal, arbitration, or related proceeding, at the taxpayer's expense and with equipment provided by the taxpayer, and no such officer or employee may refuse to participate in an interview relating to such valuation for reason of the taxpayer's choice to record such interview.

(i) *Alternate members.* Alternate members of the county board of equalization in the order in which selected shall serve:

(1) As members of the county board of equalization in the event there is a permanent vacancy on the board created by the death, ineligibility, removal from the county, or incapacitating illness of a member or by any other circumstances. An alternate member who fills a permanent vacancy shall be considered a member of the board for the remainder of the unexpired term;

(2) In any appeal with respect to which a member of the board is disqualified and shall be considered a member of the board; or

(3) In any appeal at a regularly scheduled or called meeting in the absence of a member and shall be considered a member of the board.

(j) *Disqualification.*

(1) No member of the county board of equalization shall serve with respect to any appeal concerning which he or she would be subject to a challenge for cause if he or she were a member of a panel of jurors in a civil case involving the same subject matter.

(2) The parties to an appeal to the county board of equalization shall file in writing with the appeal, in the case of the person appealing, or, in the case of the county board of tax assessors, with the certificate transmitting the appeal, questions relating to the disqualification of members of the county board of equalization. Each question shall be phrased so that it can be answered by an affirmative or negative response. The members of the county board of equalization shall, in writing under oath within two days of their receipt of the appeal, answer the questions and any question which may be adopted pursuant to subparagraph (e)(5)(B) of this Code section. Answers of the county board of equalization shall be part of the decision of the board and shall be served on each party by first-class mail. Determination of disqualification shall be made by the judge of the superior court upon the request of any party when the request is made within two days of the response of the board to the questions. The time prescribed under subparagraph (e) (6) (A) of this Code section shall be tolled pending the determination by the judge of the superior court.

(k) *Compensation.* Each member of the county board of equalization shall be compensated by the county per diem for time expended in considering appeals. The compensation shall be paid at a rate of not less than $25.00 per day and shall be determined by the county governing authority. The attendance at required approved appraisal courses shall be part of the official duties of a member of the board, and he

or she shall be paid for each day in attendance at such courses and shall be allowed reasonable expenses necessarily incurred in connection with such courses. Compensation pursuant to this subsection shall be paid from the county treasury upon certification by the member of the days expended in consideration of appeals.

IN THE SUPERIOR COURT OF BRYAN COUNTY

STATE OF GEORGIA

FILED IN CLERK'S OFFICE
TIME 12:30 pm

MAY 04, 2001

Rebecca G. Crowe
Clerk of Courts
Bryan County, Georgia

BRYAN COUNTY BOARD)
OF TAX ASSESSORS,
Petitioner,)

v.) CIVIL ACTION
FILE NO. 2000-V-125

BRYAN COUNTY BOARD)
OF EQUALIZATION,
Defendant.)

FINAL JUDGMENT AND DECREE

In its amended complaint the Bryan County Board of Tax Assessors alleges that the Bryan County Board of Equalization deliberates in private on cases pending before it, thus violating the provisions of the Georgia Open Meetings Act (OCGA Sections 50-14-1 through 50-14-6). It seeks to set aside the decision of the Board of Equalization on an appeal by The Ford Plantation, LLC heard on February 10, 2000 concerning the valuation of properties identified in the plaintiff's records as Property Identification No. 54-075 and No. 60-009. The plaintiff also seeks a declaratory judgment that

the hearings and deliberations of the Board of Equalization are subject to the requirements of the Open Meetings Act and an injunction to prevent future violations of said act.

The attorneys for both parties have signed a stipulation of facts in which the Board of Equalization admits that it deliberates and votes in private and that it deliberated and voted in private on the appeal by the Ford Plantation, LLC mentioned in the amended complaint. The Board of Equalization argues that it functions in a quasi judicial capacity and that this court should allow the board to deliberate and vote in private. The Board of Tax Assessors argues that there is no exemption in the Open Meetings Act for the Board of Equalization. There is no contention that the board hears and receives evidence in private. The issue is whether the board can deliberate and vote in private.

Having considered the arguments of both parties and the amicus curiae brief of the Attorney

General of Georgia, this court agrees with the Bryan County Board of Tax Assessors that the Bryan County Board of Equalization is subject to the provisions of the Georgia Open Meetings Law (OCGA Sections 50-14-1 through 50-14-6) and therefore required to allow public access to its meetings whenever it hears, deliberates and votes on cases heard by it. See 1995 Op. Atty. Gen. U95-22.

It is therefore ordered, declared, and decreed that the decision of the Bryan County Board of Equalization on the tax appeal mentioned in plaintiff's amended complaint is set aside, that the Bryan County Board of Equalization violates the Open Meeting Act whenever it deliberates and votes in private, and that said board is restrained and enjoined from future violations of said act.

This 2nd day of May, 2001.

/s/ DAVID L. CAVENDER
DAVID L. CAVENDER
Judge, Superior Courts
Atlantic Judicial Circuit

*253 Ga. App. 831, *; 560 S.E.2d 719, **;*
*2002 Ga. App. LEXIS 217, ***; 2 Fulton County DR 629*

BRYAN COUNTY BOARD OF EQUALIZATION v. BRYAN COUNTY BOARD OF TAX ASSESSORS.

A01A2286.

COURT OF APPEALS OF GEORGIA, SECOND DIVISION

253 Ga. App. 831; 560 S.E.2d 719; 2002 Ga. App. LEXIS 217; 2 Fulton County DR 629

February 19, 2002, Decided

SUBSEQUENT HISTORY: [***1] Certiorari Applied For.

PRIOR HISTORY: Open Meetings Act. Bryan Superior Court. Before Judge Cavender.

DISPOSITION: Judgment affirmed.

CASE SUMMARY

PROCEDURAL POSTURE: After receiving a valuation from the Georgia Board of Tax Assessors on two pieces of property, a plantation filed an appeal with the Board of Equalization. The board held an open hearing at which evidence was presented on the value of the property, but the board deliberated and voted in private. The tax assessors sued and a trial court set aside the decision for violation of the Georgia Open Meetings Act. The equalization board appealed.

OVERVIEW: The equalization board acknowledged that it was an agency subject to Ga. Code Ann. § 50-14-3 of the Georgia Open Meetings Act, and that its meetings had to be open to the public. It contended, however, that when it deliberated and voted on tax appeals, it was performing a quasi judicial function

and was therefore entitled to deliberate and vote in private. The act specifically excluded certain proceedings from its provisions. Deliberations of the equalization board did not come under any of the specific exclusions. The appellate court concluded that the public had the right to be present for the remainder of the meeting, including the deliberations and voting. The appellate court was not persuaded by the equalization board's arguments that as a quasi-judicial body, it was entitled to conduct its deliberations and voting in secret. The appellate court realized that openness in sensitive proceedings is sometimes unpleasant, difficult, and occasionally harmful. Nevertheless, the policy of Georgia was that the public's business had to be open, not only to protect against potential abuse, but also to maintain the public's confidence in its officials.

OUTCOME: The judgment was affirmed.

CORE TERMS: deliberations, voting, governing body, Open Meetings Act, deliberate, confidence

CORE CONCEPTS - Hide Concepts

Administrative Law > Governmental Information > Public Meetings

Under Ga. Code Ann. § 50-14-1 of Georgia's Open Meetings Act, all meetings of an agency or authority of a municipality shall be open to the public. Meetings are defined under the act as the gathering of a quorum of the members of the governing body of an agency or of any committee of its members created by such governing body at a designated time and place at which official business or policy of the agency is to be discussed or at which official action is to be taken or, in the case of a committee, recommendations on official business or policy to the governing body are to be formulated or discussed.

Administrative Law > Governmental Information > Public Meetings

Governments > Legislation > Interpretation

The Georgia Open Meetings Act must be broadly construed to effect its purposes of protecting the public and individuals from closed-door meetings. The policy of the State of Georgia is that the public's business must be open, not only to protect against potential abuse, but also to maintain the public's confidence in its officials.

Administrative Law > Governmental Information > Public Meetings

The Georgia Open Meetings Act specifically excludes certain proceedings from its provisions. Deliberations of a Boards of Equalization do not come under any of the specific exclusions. Ga. Code Ann. § 50-14-3. Next, the act itself provides a two-pronged test for its applicability: first, is the meeting one of a governing body of an agency or any committee thereof?; and second, is the meeting one at which official business or policy of the agency is to be discussed or at which official action is to be taken? Under this test, the act applies to all meetings of the Board of the Equalization, including deliberations and voting.

COUNSEL: Ray C. Smith, for appellant.

Thurbert E. Baker, Attorney General, Kathryn L. Allen, Senior Assistant Attorney General, Henderson & Harvey, Michele M. Henderson, for appellee.

JUDGES: ANDREWS, Presiding Judge. Eldridge and Miller, JJ., concur.

OPINION BY: ANDREWS

OPINION: [*831] [**719]

ANDREWS, Presiding Judge.

The sole issue before us on appeal is whether the Bryan County Board of Equalization is subject to the provisions of the Open-Meetings Act when it deliberates and votes on matters before it. We conclude that it is and affirm.

The parties stipulated to the following facts. After receiving a valuation from the Board of Tax Assessors on two pieces of property, the Ford Plantation filed an appeal with the Board of Equalization. The Board of Equalization held an open hearing at which evidence [*832] was presented as to the value of the property but, after hearing the evidence, closed the meeting and conducted their deliberations and voting in private. The Board of Tax Assessors sued to set aside the decision for violation of the Open Meetings Act and requested an injunction to prevent further violations of the Open Meetings Law.

[**720] Under Georgia's Open Meetings Act, O.C.G.A. § 50-14-1, all "meetings" of an agency or authority of a municipality shall be open to the public. Meetings are defined under [***2] the Act as "the gathering of a quorum of the members of the governing body of an agency or of any committee of its members created by such governing body . . . at a designated time and place at which official business or policy of the agency is to be discussed or at which official action is to be taken or, in the case of a committee, recommendations on official business or policy to the governing body are to be formulated or discussed." O.C.G.A. § 50-14-1 (a) (2) ; see Red & Black Pub. Co. v. Bd. of Regents, 262 Ga. 848, 852 (3) (427 S.E.2d 257) (1993). However, before we begin our analysis under this Act, "(w)e must bear in mind that the Open Meetings Act must be broadly construed to effect its purposes of protecting the public and individuals from closed-door meetings.

(Cit.)" Kilgore v. R. W. Page Corp., 261 Ga. 410, 411 (2) (405 S.E.2d 655) (1991). "(T)he policy of this state is that the public's business must be open, not only to protect against potential abuse, but also to maintain the public's confidence in its officials. (Cit.)" Red & Black Pub. Co., supra at 854.

(Emphasis *Jersawitz v. Fortson*, 213 Ga. App. 796, 798 (1) (446 S.E.2d 206) (1994). [***3]

The Board of Equalization acknowledges that it is an agency subject to the Open Meetings Act and that its meetings must be open to the public. It contends, however, that when it deliberates and votes on tax appeals, it is performing a quasi judicial function and is therefore entitled to deliberate and vote in private.

First, we note that the Act specifically excludes certain proceedings from its provisions. Deliberations of the Boards of Equalization do not come under any of the specific exclusions. O.C.G.A. § 50-14-3 . Next, the Act itself provides a two-prong test for its applicability: "first, is the meeting one of a 'governing body of an agency' or any committee thereof?; and second, is the meeting one 'at which official business or policy of the agency is to be discussed or at which official action is to be taken(?)" Red & Black Pub. Co. v. Bd. of Regents, 262 Ga. 848, 853 (427 S.E.2d 257) (1993). Under this test, the Act applies to all meetings of the Board of Equalization, including deliberations and voting.

[*833] In addition, this Court disapproved a similar procedure in *Beck v. Crisp County Zoning Board of Appeals*, 221 Ga. App. 801 (472 S.E.2d 558) (1996). [***4] In *Beck*, the Zoning Board of Appeals adjourned the public hearing prior to deciding and voting on the matters before it. Id. at 801-802. We held that the public had the right to be present for the remainder of the meeting, including the deliberations and voting. Id. at 803.

We are not persuaded by the Board of Equalization's arguments that as quasi-judicial bodies, they are entitled to conduct their deliberations and voting in secret. We realize that "openness in sensitive proceedings is sometimes unpleasant, difficult, and occasionally harmful. Nevertheless, the policy of this state is that the public's business must be open, not only to protect against potential abuse, but also to maintain the public's confidence in its officials." *Red & Black*, supra at 854.

Judgment affirmed. Eldridge and Miller, JJ., concur.

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*2002 Ga. LEXIS 496, **

BRYAN COUNTY BOARD OF EQUALIZATION v. BRYAN COUNTY BOARD OF TAX ASSESSORS

Case No. S02C0922

SUPREME COURT OF GEORGIA

2002 Ga. LEXIS 496

June 10, 2002, Decided

PRIOR HISTORY: *[*1] COURT OF APPEALS CASE NO. A01A2286.*

OPINION: The Supreme Court today denied the petition for certiorari in this case.

All the Justices concur.

SUPREME COURT OF GEORGIA

Case No. S02C0922 Atlanta, July 12, 2002

The Honorable Supreme Court met pursuant to adjournment. The following order was passed:

BRYAN COUNTY BOARD OF EQUALIZATION v. BRYAN COUNTY BOARD OF TAX ASSESSORS

Upon consideration of the Motion for Reconsideration filed in this case, it is ordered that it be hereby denied.

All the Justices concur, except Carley, J., who dissents.

SUPREME COURT OF THE STATE OF GEORGIA

Clerk's Office, Atlanta

I hereby certify that the above is a true extract from the minutes of the Supreme Court of Georgia. Witness my signature and the seal of said court hereto affixed the day and year last above written.

/s/ SHERIE M. WELCH
Sherie M. Welch, Clerk

O.C.G.A. § 50-14-1

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TITLE 50. STATE GOVERNMENT
CHAPTER 14. OPEN AND PUBLIC MEETINGS

GO TO CODE ARCHIVE DIRECTORY FOR THIS JURISDICTION

O.C.G.A. § 50-14-1 (2002)

§ 50-14-1. Meetings to be open to public; limitation on action to contest agency action; recording; notice of time and place; access to minutes; telecommunications conferences

(a) As used in this chapter, the term:

(1) "Agency" means:

(A) Every state department, agency, board, bureau, commission, public corporation, and authority;

(B) Every county, municipal corporation, school district, or other political subdivision of this state;

(C) Every department, agency, board, bureau, commission, authority, or similar body of each such county, municipal corporation, or other political subdivision of the state;
(D) Every city, county, regional, or other authority established pursuant to the laws of this state; and

(E) Any nonprofit organization to which there is a direct allocation of tax funds made by the governing authority of any agency as defined in this paragraph and which allocation constitutes more than 331/3

percent of the funds from all sources of such organization; provided, however, this subparagraph shall not include hospitals, nursing homes, dispensers of pharmaceutical products, or any other type organization, person, or firm furnishing medical or health services to a citizen for which they receive reimbursement from the state whether directly or indirectly; nor shall this term include a subagency or affiliate of such a nonprofit organization from or through which the allocation of tax funds is made.

(2) "Meeting" means the gathering of a quorum of the members of the governing body of an agency or of any committee of its members created by such governing body, whether standing or special, pursuant to schedule, call, or notice of or from such governing body or committee or an authorized member, at a designated time and place at which any public matter, official business, or policy of the agency is to be discussed or presented or at which official action is to be taken or, in the case of a committee, recommendations on any public matter, official business, or policy to the governing body are to be formulated, presented, or discussed. The assembling together of a quorum of the members of a governing body or committee for the purpose of making inspections of physical facilities under the jurisdiction of such agency or for the purposes of meeting with the governing bodies, officers, agents, or employees of other agencies at places outside the geographical jurisdiction of an agency and at which no final official action is to be taken shall not be deemed a "meeting."

(b) Except as otherwise provided by law, all meetings as defined in subsection (a) of this Code section shall be open to the public. Any resolution, rule, regulation, ordinance, or other official action of an agency adopted, taken, or made at a meeting which is not open to the public as required by this chapter shall not be binding. Any action contesting a

resolution, rule, regulation, ordinance, or other formal action of an agency based on an alleged violation of this provision must be commenced within 90 days of the date such contested action was taken, provided that any action under this chapter contesting a zoning decision of a local governing authority shall be commenced within the time allowed by law for appeal of such zoning decision.

(c) The public at all times shall be afforded access to meetings declared open to the public pursuant to subsection (b) of this Code section. Visual, sound, and visual and sound recording during open meetings shall be permitted.

(d) Every agency shall prescribe the time, place, and dates of regular meetings of the agency. Such information shall be available to the general public and a notice containing such information shall be posted and maintained in a conspicuous place available to the public at the regular meeting place of the agency. Meetings shall be held in accordance with a regular schedule, but nothing in this subsection shall preclude an agency from canceling or postponing any regularly scheduled meeting. Whenever any meeting required to be open to the public is to be held at a time or place other than at the time and place prescribed for regular meetings, the agency shall give due notice thereof. "Due notice" shall be the posting of a written notice for at least 24 hours at the place of regular meetings and giving of written or oral notice at least 24 hours in advance of the meeting to the legal organ in which notices of sheriff's sales are published in the county where regular meetings are held or at the option of the agency to a newspaper having a general circulation in said county at least equal to that of the legal organ; provided, however, that in counties where the legal organ is published less often than four times weekly "due notice" shall be the posting of a written notice for at least 24 hours at the place of regular meetings and, upon written request from

any local broadcast or print media outlet whose place of business and physical facilities are located in the county, notice by telephone or facsimile to that requesting media outlet at least 24 hours in advance of the called meeting. When special circumstances occur and are so declared by an agency, that agency may hold a meeting with less than 24 hours' notice upon giving such notice of the meeting and subjects expected to be considered at the meeting as is reasonable under the circumstances including notice to said county legal organ or a newspaper having a general circulation in the county at least equal to that of the legal organ, in which event the reason for holding the meeting within 24 hours and the nature of the notice shall be recorded in the minutes. Whenever notice is given to a legal organ or other newspaper, that publication shall immediately make the information available upon inquiry to any member of the public. Any oral notice required or permitted by this subsection may be given by telephone.

(e)(1) Prior to any meeting, the agency holding such meeting shall make available an agenda of all matters expected to come before the agency at such meeting. The agenda shall be available upon request and shall be posted at the meeting site, as far in advance of the meeting as reasonably possible, but shall not be required to be available more than two weeks prior to the meeting and shall be posted, at a minimum, at some time during the two-week period immediately prior to the meeting. Failure to include on the agenda an item which becomes necessary to address during the course of a meeting shall not preclude considering and acting upon such item.

(2) A summary of the subjects acted on and those members present at a meeting of any agency shall be written and made available to the public for inspection within two business days of the adjournment of a meeting of any agency. The minutes of a meeting of any agency shall be

promptly recorded and such records shall be open to public inspection once approved as official by the agency, but in no case later than immediately following the next regular meeting of the agency; provided, however, nothing contained in this chapter shall prohibit the earlier release of minutes, whether approved by the agency or not. Said minutes shall, as a minimum, include the names of the members present at the meeting, a description of each motion or other proposal made, and a record of all votes. In the case of a roll-call vote the name of each person voting for or against a proposal shall be recorded and in all other cases it shall be presumed that the action taken was approved by each person in attendance unless the minutes reflect the name of the persons voting against the proposal or abstaining.

(f) An agency with state-wide jurisdiction shall be authorized to conduct meetings by telecommunications conference, provided that any such meeting is conducted in compliance with this chapter.

O.C.G.A. § 50-14-3

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TITLE 50. STATE GOVERNMENT
CHAPTER 14. OPEN AND PUBLIC MEETINGS

GO TO CODE ARCHIVE DIRECTORY FOR THIS JURISDICTION

O.C.G.A. § 50-14-3 (2002)

§ 50-14-3. Excluded proceedings

This chapter shall not apply to the following:

(1) Staff meetings held for investigative purposes under duties or responsibilities imposed by law;

(2) The deliberations and voting of the State Board of Pardons and Paroles; and in addition said board may close a meeting held for the purpose of receiving information or evidence for or against clemency or in revocation proceedings if it determines that the receipt of such information or evidence in open meeting would present a substantial risk of harm or injury to a witness;

(3) Meetings of the Georgia Bureau of Investigation or any other law enforcement agency in the state, including grand jury meetings;
(4) Meetings when any agency is discussing the future acquisition of real estate, except that such meetings shall be subject to the requirements of this chapter for the giving of the notice of such a meeting to the public and preparing the minutes of such a meeting; provided, however, the disclosure of such portions of the minutes as would identify

real estate to be acquired may be delayed until such time as the acquisition of the real estate has been completed, terminated, or abandoned or court proceedings with respect thereto initiated;

(5) Meetings of the governing authority of a public hospital or any committee thereof when discussing the granting, restriction, or revocation of staff privileges or the granting of abortions under state or federal law;

(6) Meetings when discussing or deliberating upon the appointment, employment, compensation, hiring, disciplinary action or dismissal, or periodic evaluation or rating of a public officer or employee but not when receiving evidence or hearing argument on charges filed to determine disciplinary action or dismissal of a public officer or employee. The vote on any matter covered by this paragraph shall be taken in public and minutes of the meeting as provided in this chapter shall be made available. Meetings by an agency to discuss or take action on the filling of a vacancy in the membership of the agency itself shall at all times be open to the public as provided in this chapter;

(7) Adoptions and proceedings related thereto; and

(8) Meetings of the board of trustees or the investment committee of any public retirement system created by Title 47 when such board or committee is discussing matters pertaining to investment securities trading or investment portfolio positions and composition.
acquisition of real estate, except that such meetings shall be subject to the requirements of this chapter for the giving of the notice of such a meeting to the public and preparing the minutes of such a meeting; provided, however, the disclosure of such portions of the minutes as would identify real estate to be acquired may be delayed until such time as the acquisition of the real estate has been completed,

terminated, or abandoned or court proceedings with respect thereto initiated;

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*225 Ga. App. 409, *; 483 S.E.2d 922, **; 1997 Ga. App. LEXIS 392, ***; 97 Fulton County DR 1469*

GRAND PARTNERS JOINT VENTURE I et al. v. REALTAX RESOURCE, INC.

A96A2122.

COURT OF APPEALS OF GEORGIA

225 Ga. App. 409; 483 S.E.2d 922; 1997 Ga. App. LEXIS 392; 97 Fulton County DR 1469

March 12, 1997, Decided

PRIOR HISTORY: [***1] Action on contract. Fulton Superior Court. Before Judge Eldridge.

DISPOSITION: Judgment affirmed.

CASE SUMMARY

PROCEDURAL POSTURE: Appellant joint venture sought review of the judgment of the Superior Court of Fulton County (Georgia), which granted appellee tax consultant's motion for summary judgment and denied the joint venture's motion for summary judgment on the consultant's complaint for fees owed for services it performed.

OVERVIEW: The joint venture hired the consultant to be responsible for a program, in exchange for a fee, that concerned the county real estate tax assessment on the joint venture's property. The consultant obtained a reduction of the assessment valuation and received tax refunds related to the property. The joint venture refused to pay the consultant the previously negotiated fees for its services. The consultant filed suit against the joint venture for nonpayment of fees. The joint venture asserted several affirmative defenses, including that the consultant sought to enforce a contract pursuant to which it would engage in the unauthorized

practice of law. The parties moved for summary judgment. The trial court granted the consultant's motion. The court affirmed, and held that the trial court had properly granted summary judgment to the consultant. The court held that the contract reflected no illegality because the consultant's agreement to pursue the joint venture's appeal before the county board of equalization did not as a matter of law implicate the provision of legal services or advice.

OUTCOME: The court affirmed the trial court's grant of summary judgment to the consultant.

CORE TERMS: summary judgment, unauthorized practice of law, legal services, advice, practice of law, equalization, appraisal, valuation, non-lawyer, real estate tax, real estate, pretrial, license, implicate, negotiated, appraiser, properly granted summary judgment, administrative bodies, board of equalization, necessarily involve, matter of law, conclusory, quasi-judicial, punctuation, obligated, connected, authorize, disposed, property tax, competent jurisdiction

CORE CONCEPTS - Hide Concepts
Civil Procedure > Pleading & Practice > Defenses, Objections & Demurrers > Affirmative Defenses
Civil Procedure > Summary Judgment > Burdens of Production & Proof
Civil Procedure > Summary Judgment > Summary Judgment Standard

When the facts concerning an affirmative defense are uncontradicted, the matter may be disposed of by summary judgment; but the burden is on the movant to prove no genuine issue of fact remains, the evidence is construed in favor of the respondent, and his evidence is treated with considerable indulgence.

Legal Ethics > Unauthorized Practice of Law

The unauthorized practice of law is illegal.

Ga. Code Ann. §§ 15-19-51, 15-19-56. In setting the parameters for this illegal conduct, the general assembly defines the "practice of law" as including: (1) representing litigants in court and preparing pleadings and other papers incident to any action or special proceedings in any court or other judicial body; (5) the giving of any legal advice; and (6) any action taken for others in any matter connected with the law. Ga. Code Ann. § 15-19-50. Ga. Code Ann. § 15-19-51(a) makes it unlawful for any person other than a duly licensed attorney at law to render or furnish legal services or advice or to render legal services of any kind in actions or proceedings of any nature.

Tax Law > State & Local Tax > Administration & Procedure

Ga. Code Ann. § 48-5-311(e)(6)(A) provides that a taxpayer may appear before the board concerning any appeal in person, by his or her authorized agent or representative, or both.

Tax Law > State & Local Tax > Administration & Procedure

Boards of equalization are not courts. They are quasi-judicial administrative bodies created by the legislature.

Civil Procedure > Summary Judgment > Supporting Papers & Affidavits

Allegations, conclusory facts, and conclusions of law cannot be utilized to support or defeat motions for summary judgment.

Civil Procedure > Trials > Pretrial Conferences

A pretrial order limits the issues for trial to those not disposed of by admissions or agreements of counsel. The order, when entered, controls the subsequent course of the action unless modified at the trial to prevent manifest injustice. If a claim or issue is omitted from the order, it is waived.

COUNSEL: Minkin & Snyder, Michael J. King, G. Brian Raley, for appellants.

Gorby & Reeves, Michael J. Gorby, Mary D. Peters, Douglas R. Kertscher, Adam R. Gaslowitz & Associates, Adam R. Gaslowitz, Michael S. Wakefield, for appellee.

JUDGES: RUFFIN, Judge. McMurray, P. J., and Johnson, J., concur.

OPINIONBY: RUFFIN

OPINION: [*409] [**923] RUFFIN, Judge.

Realtax Resource, Inc. ("Realtax") sued Grand Partners Joint Venture I and Grand Partners Joint Venture II (collectively "Grand Partners") for fees allegedly owed for services performed by Realtax. Grand Partners appeals from the trial court's grant of partial summary judgment to Realtax and the denial of its motion for summary judgment. For reasons which follow, we affirm.

The record reveals the following facts. Grand Partners owned property known as the GLG Grand Tower in Atlanta. Believing that it might be entitled to a significant tax refund on the property, Grand Partners hired Realtax, which is in the business of providing services that minimize real estate tax evaluation and, in that connection, pursuing real estate tax appeals with taxing authorities on behalf of clients. [***2] On January 12, 1995, Grand Partners and Realtax entered into a "Property Tax Commitment Agreement," whereby Realtax agreed, in exchange for a fee, to be responsible for the "1994 Ad Valorem Tax Program" relating to Grand Partners' property within the GLG Grand Tower.

Pursuant to that agreement, Realtax was responsible for "the preparation and filing of real estate tax

returns, where applicable, an analysis of all assessed values, the submission of an annual Ad [*410] Valorem Tax Report, where applicable, which compares prior and current year's tax obligations, and the presentation of audited tax statements outlining the results of any appeal in a timely fashion for payment." In addition, the agreement stated that "Realtax will initiate appeals to local taxing jurisdictions where Realtax feels the need is warranted. It is expressly understood by all parties that the compensation in this agreement includes only the informal appeal levels up to and including any State Boards of Equalization." Grand Partners also executed a "Letter of Authorization" authorizing Realtax to "file real estate tax returns, where applicable, to change mailing addresses on tax rolls and digests, to investigate appraisals [***3] and assessments, to argue tax appeal cases in both informal review and formal review, to appear before administrative boards and agencies and, where authorized, to appear before courts of competent jurisdiction."

Realtax filed a property tax appeal on behalf of Grand Partners and negotiated with a representative from the Fulton County tax assessor's office regarding the county's assessment of the GLG Grand Tower, which was initially appraised at $ 75 million. [**924] Through negotiations, Realtax reached a proposed settlement with the county to value the property at approximately $ 51 million. Grand Partners approved the settlement and withdrew its tax appeal before the appeal reached the county board of equalization.

Following the settlement, Grand Partners received tax refunds relating to the property. Dissatisfied with the results reached by Realtax, however, Grand Partners refused to pay Realtax the previously negotiated fees for its services.

Realtax subsequently sued Grand Partners for non-

payment of fees under the Property Tax Commitment Agreement. Grand Partners answered, asserting several affirmative defenses. In particular, Grand Partners averred that the agreement, which [***4] it voluntarily entered, is void and illegal because Realtax sought "to enforce a contract pursuant to which it would engage in the unauthorized practice of law without a license." Realtax and Grand Partners both moved for summary judgment. After a hearing, the trial court denied Grand Partners' motion for summary judgment and granted partial summary judgment to Realtax on Grand Partners' affirmative defense that Realtax illegally engaged in the unauthorized practice of law and on Grand Partners' argument that Realtax cannot collect its fees because it acted as a real estate appraiser without certification. This appeal followed.

1. Grand Partners' first two enumerations of error focus on the unauthorized practice of law defense. It argues that the trial court erred in granting Realtax summary judgment on the defense and further claims that the trial court erred in denying it summary judgment [*411] on this issue.

"When the facts concerning an affirmative defense are uncontradicted, the matter may be disposed of by summary judgment [cit.]; but the burden is on the movant to prove no genuine issue of fact remains, the evidence is construed in favor of the respondent, and his evidence is [***5] treated with considerable indulgence. [Cit.]" Maddox v. Leaphart, 214 Ga. App. 340, 342 (3) (447 S.E.2d 694) (1994). Applying this standard, we find that the trial court properly granted summary judgment to Realtax and denied summary judgment to Grand Partners on the unauthorized practice of law defense.

(a) The unauthorized practice of law is illegal. O.C.G.A. §§ 15- 19-51; 15-19-56. In setting the parameters for this illegal conduct, the General Assembly has defined the "practice of law" as

including: "(1) representing litigants in court and preparing pleadings and other papers incident to any action or special proceedings in any court or other judicial body; . . . (5) the giving of any legal advice; and (6) any action taken for others in any matter connected with the law."O.C.G.A. §15-19-50. Section 15-19-51 (a) makes it unlawful for "any person other than a duly licensed attorney at law . . . to render or furnish legal services or advice [or] . . . to render legal services of any kind in actions or proceedings of any nature."

Grand Partners argues that, as a matter of law, Realtax engaged in the practice of law without a license under the Property Tax Commitment Agreement, [***6] thereby rendering the agreement void. Specifically, Grand Partners contends that because the board of equalization is authorized to decide legal issues, such as constitutional challenges (see Wilkes v. Redding, 242 Ga. 78 (247 S.E.2d 872) (1978)), Realtax's commitment to represent its interests before that board necessarily amounts to the practice of law. We disagree and refuse to deem inappropriate all non-lawyer representation before the board.

The General Assembly created county boards of equalization to hear and determine appeals from property assessments "as to matters of taxability, uniformity of assessment, and value, and, for residents, as to denials of homestead exemptions." O.C.G.A. § 48-5-311 (e) (1). The General Assembly specifically authorized non-lawyers to appear before these boards on behalf of taxpayers. Outlining the procedures governing the boards, Section 48-5-311 (e) (6) (A) provides that "[a] taxpayer may appear before the board concerning any appeal in person, by his or her authorized agent or representative, or both." (Emphasis supplied.)

Grand Partners argues that the word "representative" must mean "attorney" in order

[**925] to harmonize O.C.G.A. § 48-5-311 [***7] (e) (6) (A) with the statutory prohibition against the unauthorized practice of law. Representation before the board, however, does not necessarily involve the practice of law. Although an appeal to the board conceivably [*412] could implicate legal services and advice, we do not find that such services and advice are provided or required in every appeal, and certainly not this appeal. Furthermore, we do not construe representation before such a board as an appearance "in court." Boards of equalization are not courts. They are quasi-judicial administrative bodies created by the legislature. See Vann v. DeKalb County Bd. of Tax Assessors, 186 Ga. App. 208, 210 (1) (367 S.E.2d 43) (1988); Loyd v. Ga. State Health Planning &c. Agency, 168 Ga. App. 850, 852 (1) (310 S.E.2d 738) (1983) (indicating that county boards of equalization are administrative bodies); see also Ga. Const. of 1983, Art. VI, Sec. I, Par. I ("The General Assembly . . . may authorize administrative agencies to exercise quasi-judicial powers.").

In contrast to other statutory references to the taxpayer's "attorney," O.C.G.A. § 48-5-311 (e) (6) (A) uses the more generic term "representative." Compare with O.C.G.A. § 48-5-311 [***8] (g) (2). To support its position, Grand Partners "would have us add a limiting phrase into a subsection when the legislature, faced with a choice, did not do so. A statute shall be construed so as to give full force and effect to all of its provisions and so as to reconcile any apparent conflicts." (Citations and punctuation omitted.) Dept. of Human Resources v. Hutchinson, 217 Ga. App. 70, 72 (1) (456 S.E.2d 642) (1995); see also Irwin v. Young, 212 Ga. 1, 5 (90 S.E.2d 22) (1955) ("The word 'represent' means to stand in the place of another, act his part, or speak with authority on behalf of another. [Cit.] One does not have to be a lawyer to represent another.").

The legislature elected to permit non-lawyer representation before the county boards of

equalization. This statutory authorization does not necessarily involve the practice of law without a license. See In re Petition of Burson, 909 S.W.2d 768, 777 (Tenn. 1995) (upholding statutory provision allowing non-lawyer representation of taxpayers before boards of equalization because the evidence did not establish that the services performed "require the professional judgment of a lawyer"). Similarly, Realtax's agreement [***9] to pursue Grand Partners' appeal before the board does not, as a matter of law, implicate the provision of legal services or advice. On its face, therefore, "the contract reflects no illegality." n1 Kimbrell v. Connor, 218 Ga. App. 812, 814 (463 S.E.2d 376) (1995).

----------Footnotes----------

n1 Grand Partners contends that through the authorization letter, Realtax improperly and illegally agreed to appear on behalf of Grand Partners in "courts of competent jurisdiction." Pretermitting whether the letter is part of the contract, as Grand Partners claims, it specifically indicates that Realtax may appear in such courts only "where authorized." Furthermore, the letter does not provide that Realtax will represent Grand Partners' legal interests. It may simply authorize Realtax to appear as a witness on Grand Partners' behalf. On its face, this letter does not implicate the unauthorized practice of law.

----------End Footnotes----------

(b) Pretermitting the question of when lay representation in a [*413] tax appeal might encroach upon the practice of law, we further find that [***10] Realtax's work for Grand Partners did not involve the unauthorized practice of law.

The Realtax employee who worked on Grand Partners' appeal testified that the appeal was

negotiated and settled before progressing to the board of equalization. He further testified that, with respect to the appeal, he performed the following duties: "I looked at comparable property tax values. I analyzed the current asking prices of the condos in relation to the tax values. I compiled the income analysis pro forma and year ending for the office and the hotel. And I derived all those components into a value which I felt would be fair based . . . for the tax year 1994 on each individual component."

At deposition, a Grand Partners representative described the "legal" aspects of Realtax's services as follows: "[Realtax] reviewed contracts. They reviewed statutes I would hope. To the extent that you would call those -- applied the facts to legal situations. To the extent that you believe that calls for -- call that practice, call that law, then they [**926] provided legal services." He testified that Realtax also advised Grand Partners on the law "throughout the process" and proffered advice on "the probable [***11] outcome of a trial" on the issue of "tax valuation." Realtax further offered the opinion that Grand Partners "would not do well at trial for a variety of reasons."

With respect to Realtax's alleged legal services, therefore, the only specifics provided by Grand Partners' representative were that Realtax reviewed contracts, read statutes, and provided advice on tax valuation and how that valuation would be received by the jury. We do not find that these acts or Realtax's other activities connected to filing and negotiating the tax appeal constitute the unauthorized practice of law. Conclusory statements that Realtax advised Grand Partners on the law and applied facts to legal situations similarly cannot avoid summary judgment. "Allegations, conclusory facts, and conclusions of law cannot be utilized to support or defeat motions for summary judgment." Peterson v. Midas Realty Corp., 160 Ga. App. 333, 335 (287 S.E.2d 61) (1981).

Grand Partners has pointed to no evidence that Realtax provided legal services and advice or otherwise practiced law. To the contrary, the record indicates that Realtax offered tax valuation services and advised Grand Partners on how this valuation [***12] would be received by others, including a jury. The trial court properly granted summary judgment to Realtax and denied summary judgment to Grand Partners on the unauthorized practice of law defense. Maddox, supra.

2. In its final enumeration of error, Grand Partners claims that the trial court erred in granting summary judgment to Realtax on its argument that "Realtax acted as an unclassified real estate appraiser in the performance of its contract with Grand Partners." [*414] Realtax asserts that Grand Partners waived this argument by failing to include it in its answer, pretrial discovery, pretrial order, or other pleadings. We agree.

Grand Partners admittedly never raised the issue in its summary judgment documents, and the record reveals no mention of it in Grand Partners' answer or any submissions relating to the pretrial order. Instead, Grand Partners voiced this argument for the first time at the summary judgment hearing. Realtax objected to the argument as untimely.

In an effort to avoid waiver, Grand Partners contends that, as part of its prima facie case for compensation, Realtax must plead and prove that its employees "held a Georgia appraiser classification of the type [***13] necessary to perform . . . appraisal activity [for Grand Partners] at all times during the performance of such services." O.C.G.A. § 43-39A-17. In short, Grand Partners argues that it was never obligated to raise the appraisal issue because Realtax bore the burden of proving that it held the appropriate appraisal licenses. Realtax, however, claims that Grand Partners owes fees for tax

consulting services, not real estate appraisal services. We find that Grand Partners was obligated to timely raise for the court and opposing party its factual argument that Realtax's services actually constituted "real estate appraisal activity."

"A pretrial order limits the issues for trial to those not disposed of by admissions or agreements of counsel. The order, when entered, controls the subsequent course of the action unless modified at the trial to prevent manifest injustice. If a claim or issue is omitted from the order, it is waived." (Citations and punctuation omitted.) Long v. Marion, 257 Ga. 431, 433 (2) (360 S.E.2d 255) (1987); see also Rice v. Cropsey, 203 Ga. App. 272, 273 (1) (416 S.E.2d 786) (1992). Grand Partners did not raise this argument in its answer, other pleadings, or [***14] its pretrial order submissions. Thus, the trial court did not err in removing the argument from the trial of this case. Long, supra.

Judgment affirmed. McMurray, P. J., and Johnson, J., concur.

*238 Ga. 47, *; 230 S.E.2d 861, **;*
*1976 Ga. LEXIS 1085, ****

BOUY et al. v. KILEY et al.

No. 31441

Supreme Court of Georgia

238 Ga. 47; 230 S.E.2d 861; 1976 Ga. LEXIS 1085

September 14, 1976, Argued
December 1, 1976, Decided

PRIOR HISTORY: [***1]

Injunction, etc. Chatham Superior Court. Before Judge Cheatham.

DISPOSITION: *Judgment affirmed.*

CORE TERMS: taxability, county board, ad valorem, original action, equalization, declaration, taxation, assessors, enjoin

COUNSEL: *Lee & Clark, Fred D. Clark,* for appellants.

Anton F. Solms, Jr., L. W. Childs, Jr., for appellee.

JUDGES: Gunter, Justice. All the Justices concur.

OPINION BY: GUNTER

OPINION: [*47] [**862] This appeal is from a judgment that dismissed the appellants' complaint. The appellants brought an action in superior court to enjoin the tax commissioner from levying upon and selling their property pursuant to an execution issued for ad valorem taxes. The appellants complaint also sought a court declaration that their property, a motel located on municipal airport property, was not subject to ad valorem taxation.

The pleadings showed that the appellants had appealed the assessments for three separate years to the Board of Equalization, and that the board had fixed the assessed value for each of the three years. No appeal was taken from the board decision to the superior court pursuant to Code Ann. § 92-6912.

Appellants contend that the Board of Equalization could not and did not determine the taxability of its property, and that they properly raised the issue by an original action [***2] in superior court to enjoin levy and sale and for a declaration that their property was not subject to ad valorem taxation. Code Ann. § 92-6912 (5)(A) provides: "Any taxpayer may appeal from an assessment by the board of tax assessors to the county board of equalization as to matters of taxability, uniformity of assessment, and value in the manner herein provided."

Code Ann. § 92-6912 (6)(A) provides: "The taxpayer or the county board of tax assessors may appeal to the [*48] superior court of the county in which the property lies from the decisions of the county board of equalization." Subsection (6)(C) provides that such an appeal to the superior court shall constitute a de novo action.

Therefore, if an alleged taxpayer desires to contest the taxability of his property, he must do so by appeal to the Board of Equalization and then by appeal from the Board's decision to the superior court.

Judicial power to determine taxability is vested in the Board of Equalization. See *Tax Assessors v. Chitwood*, 235 Ga. 147 (218 SE2d 759) (1975) at p. 154. And a ruling adverse to the taxpayer on the issue of taxability by the board becomes a de novo proceeding in superior court by [***3] appeal from the board's decision.

In the instant case the appellants appealed to the

Board of Equalization, but they took no further appeal from the board's decision. Having failed to appeal from the board's decision, they could not at a later date successfully institute an original action in the superior court to raise the issue of taxability.

The judgment of the trial court dismissing the appellants' complaint was correct.

Judgment affirmed.

*262 Ga. 848, *; 427 S.E.2d 257, **;*
*1993 Ga. LEXIS 309, ***; 92 Fulton County DR 964*

RED & BLACK PUBLISHING COMPANY, INC. et al. v. BOARD OF REGENTS et al.; and vice versa

Nos. S92A1111, S92X1112

Supreme Court of Georgia

262 Ga. 848; 427 S.E.2d 257; 1993 Ga. LEXIS 309; 92 Fulton County DR 964; 21 Media L. Rep. 1309

March 15, 1993, Decided

PRIOR HISTORY: [***1]

Opens Records Act; constitutional question. Fulton Superior Court. Before Judge Hull. DATE OF JUDGMENT APPEALED: 02-20-92. NOTICE OF APPEAL DATE: 03-12-92. LOWER CT#:D90899.

DISPOSITION: *Judgment affirmed in Case No. S92X1112. Judgment reversed in Case No. S92A1111.*

CASE SUMMARY

PROCEDURAL POSTURE: Appellant student newspaper brought an action against appellee university to obtain access to records and disciplinary proceedings of the student court. The Fulton Superior Court (Georgia) dismissed the university president as a party, held the student newspaper had a right of access to the records, but not to the proceedings. The student newspaper and university appealed.

OVERVIEW: The student newspaper was denied access to student Organization Court records and proceedings about hazing charges against two fraternities. The student newspaper filed an action against the university under the Open Records Act, Ga. Code Ann. § 50-18-70 et seq., and the Open Meetings Act, Ga. Code Ann. § 50-14-1 et seq.

The trial court held that the records were open but the proceedings were not. It also dismissed the university president as a party. On appeal, the court held that: (1) the university was a state agency for purposes of Georgia's Open Records and Meetings laws; (2) the records of the Organization Court were "public records" and were subject to inspection by the general public under § 50-18-70 et seq.; (3) the records were not exempted under Ga. Code Ann. § 50-18-72 (a)(1), (2) and the Family Educational Rights and Privacy Act, 20 U.S.C.S. § 1232g(3); (4) the proceedings of the student court were open meetings within the meaning of § 50-14-1 et seq.; (5) the university president was a proper party defendant.

OUTCOME: The court affirmed the judgment that the university's student court records were subject to the statutory open record's requirement and reversed the determination that the proceedings were not subject to the open meeting statute. It also held that the university resident was a proper party defendant.

CORE TERMS: regulation, Buckley Amendment, educational, hazing, Open Meetings Act, law enforcement, governing body, campus, fraternity, disclosure, discipline, revocation, sorority, Open Records Act, exemptions, newspaper, personnel, adjudicates, suspension, Buckley Amendment's, federal funding, judicial order, financial aid, public office, et seq, identifiable, confidence, personally, delegated, directory

CORE CONCEPTS - Hide Concepts
Administrative Law > Separation & Delegation of Power > Jurisdiction
Administrative Law > Governmental Information > Freedom of Information
Administrative Law > Governmental Information > Public Meetings

The Board of Regents and its universities are state agencies or bodies for purposes of Georgia's Open Records and Meetings laws. The Board of Regents governs the University of Georgia and delegates to the University the formulation of rules and regulations concerning the discipline of students and student social organizations. The University created the Office of Judicial Programs to handle discipline of students and student social organizations.

Governments > State & Territorial Governments > Education

Specific University of Georgia regulations pertaining to student organizations includes prohibitions against damage to property, disorderly conduct, alcohol and drug misuse, unauthorized entry, gambling, and hazing. The Organization Court, if it determines a student organization regulation has been violated, may impose the following sanctions: recommendation for charter revocation; revocation of University registration, suspension, restriction, probation, oral reprimand, written reprimand, and community service. The Organization Court may enlarge upon or modify this list to meet the particular circumstance in any case. Fraternities and sororities are subject to the jurisdiction of the Office of Judicial Programs and the Organization Court throughout the year.

Administrative Law > Governmental Information > Freedom of Information

See Ga. Code Ann. § 50-18-70 (a).

Administrative Law > Governmental Information > Freedom of Information

The records of the student Organization Court at the University of Georgia are "public records" that, unless exempted, are subject to inspection by the general public under the Open

Records Act, Ga. Code Ann. § 50-18-70 et seq.

Administrative Law > Governmental Information > Personal Information

Administrative Law > Governmental Information > Freedom of Information

The Family Educational Rights and Privacy Act (the Buckley Amendment), 20 U.S.C.S. § 1232g, specifically provides that the sanction of loss of federal funding does not occur when an institution furnishes information in compliance with a judicial order. 20 U.S.C.S. § 1232g (b)(2)(B). Thus, where a trial court orders that records released, the Buckley Amendment cannot trigger either of the exemptions in the Georgia Open Records Act, Ga. Code Ann. § 50-18-72 (a)(1), (2).

Administrative Law > Governmental Information > Public Meetings

The Georgia Open Meetings Act ("Government in Sunshine Law") provides that "all meetings shall be open to the public," Ga. Code Ann. § 50-14-1(b), and applies to "every state department, agency, board, bureau, commission, and authority." Ga. Code Ann. § 50-14-1 (a)(1)(A).

Administrative Law > Governmental Information > Public Meetings

See Ga. Code Ann. § 50-14-1 (a) (2).

Administrative Law > Governmental Information > Public Meetings

Governments > Legislation > Interpretation

The Open Meetings Act (Act), Ga. Code Ann. § 50-14-1 et seq., was enacted in the public interest to protect the public, both individuals and the public generally, from "closed door" politics and the potential abuse of individuals and the misuse of

power such policies entail. The court has held that "the Act must be broadly construed to effect its remedial and protective purposes."

Administrative Law > Governmental Information > Public Meetings

By the Open Meeting Act, Ga. Code Ann. § 50-14-1 et seq.'s express language, the test for its applicability is two-pronged: first, is the meeting one of a "governing body of an agency" or any committee thereof and second, is the meeting one "at which official business or policy of the agency is to be discussed or at which official action is to be taken.

Criminal Law & Procedure > Trials > Defendant's Rights > Right to Public Trial

The student University of Georgia Organization Court's hearings are quite similar to those in criminal cases. The court notes the state of Georgia's strong policy against secret criminal trials. Indeed, the state constitution requires that criminal trials be public. Ga. Const. art. I, § I, para. XI (1983).

Administrative Law > Governmental Information > Public Meetings

The student Organization Court at the University of Georgia stands in the place of, and is equivalent to the Board of Regents and the University under the Open Meetings Act, Ga. Code Ann. § 50-14-1 et seq. The Organization Court, acting with the Office of Judicial Programs, is the vehicle by which the University carries out its responsibility, as directed by the Board of Regents, to regulate social organizations. Simply put, having delegated official responsibility and authority to the Organization Court, the defendants cannot hide behind meetings at which official action is taken on their behalf, and for which they are responsible, by contending that a group of students, none of whom are members of the Board of Regents, is taking that

action.

Administrative Law > Governmental Information > Public Meetings

Governments > Legislation > Enactment

The policy of the state of Georgia is that the public's business must be open, not only to protect against potential abuse, but also to maintain the public's confidence in its officials. In fact, there may be legitimate reasons for closing student court hearings to the public. However, the authority for this or any other exception to the Open Meetings Act, Ga. Code Ann. § 50-14-1 et seq., must come from the General Assembly.

Administrative Law > Governmental Information > Public Meetings

Governments > Legislation > Types of Statutes

The hearings of the student Organization Court at the University of Georgia are subject to the Open Meetings Act, Ga. Code Ann. § 50-14-1 et seq. and cannot be held in secret.

COUNSEL: *Federal, Goetz & Cronkright, R. Keegan Federal, Jr., Morris, Manning & Martin, Anthony E. DiResta, George E. Hibbs,* for appellants.

Michael J. Bowers, Attorney General, Alfred L. Evans, Jr., Senior Assistant Attorney General, for appellees.

Dow, Lohnes & Albertson, Peter C. Canfield, James A. Demetry, amicus curiae.

JUDGES: Hunt, Presiding Justice. Clarke, C. J., Fletcher, Sears-Collins, Hunstein, JJ., and Judge Michael Stoddard concur; Benham, J., concurs in the judgment only.

OPINIONBY: HUNT

OPINION: [*848] [**259] The Red & Black, the

student newspaper of the University of Georgia, n1 brought this action for injunctive relief against the Board of Regents, Charles Knapp as President of the University of Georgia and others, n2 seeking access to records and disciplinary proceedings of the student Organization Court of the University of Georgia. n3 The trial court held the newspaper had a right [***2] of access to the records under the Open Records Act, O.C.G.A. § 50-18-70 et seq., but not to the proceedings under the Open Meetings Act, O.C.G.A. § 50-14-1 et seq. The trial court also granted defendant Knapp's motion that he be dismissed as a party. Both sides appeal. We affirm the trial court's ruling allowing access to the Organization Court's records; however, we reverse the trial court's order regarding the Organization Court's proceedings because we conclude those proceedings are subject to the Open Meetings Act. We also reverse the trial court's dismissal of President Knapp as a defendant.

----------Footnotes----------

n1 Also named as a plaintiff is Jennifer Squillante, the Editor-in-Chief of the Red & Black.

n2 The named defendants are the Board of Regents of the University System of Georgia, Charles Knapp, in his capacity as President of the University of Georgia, and William B. Bracewell, in his capacity as Director of the Office of Judicial Programs of the University of Georgia.

n3 The suit was instigated after the newspaper was denied access to Organization Court records and proceedings involving hazing charges against two fraternities.

----------End Footnotes----------

[***3]

1. *The Organization Court*

To determine whether the Organization Court is subject to the Open Records and Open Meetings Acts, we look first to the nature of that court and its relationship to the Board of Regents and the University of Georgia.

As noted by the trial court, the Board of Regents and its universities are state agencies or bodies for purposes of Georgia's Open Records and Meetings laws. Board of Regents v. Atlanta Journal, 259 Ga. 214 (1) (378 S.E.2d 305) (1989); see also *Dooley v. Davidson*, 260 Ga. 577 (397 S.E.2d 922) (1990); *McLarty v. Bd. of Regents*, 231 Ga. 22 (200 S.E.2d 117) (1973). The Board of Regents governs the University of Georgia and delegates to the University the formulation of rules and regulations concerning the discipline of students and student social organizations. The University created the Office of Judicial Programs to handle discipline of students and student social organizations. n4 That office provides "training for the [student] justices, to aid in the administration of the courts, and to coordinate the future development [*849] of judicial bodies and hearing boards on campus."

----------Footnotes----------

n4 Rules of Procedure & Regulations of the Student Judiciary.

----------End Footnotes----------
[***4]

The Student Judiciary hears and adjudicates alleged violations of University rules and regulations. n5 The Student Judiciary is divided into five different student courts: Traffic Court, Campus Court, Main Court, Pharmacy Court, and Organization Court. Students serve as justices on the courts, and court sessions are held on the University of Georgia campus. Staff of the Office of Judicial Programs

(employees of the University) provide secretarial and administrative [**260] support for the student courts. All student records are housed in the Office of Judicial Programs.

----------Footnotes----------

n5 Rule 3 of the Rules of Procedure and Regulations of the Student Judiciary provides:

> The courts of the Student Judiciary function in order to establish the facts of a case, determine whether a University Regulation has been violated, and, if the student-defendant is found guilty to assess an appropriate penalty for each violation. . . .

----------End Footnotes----------

The Organization Court hears and adjudicates cases involving alleged University rule and [***5] regulation violations on the part of fraternities and sororities. n6 Five student justices of the Organization Court must be present for that court to hold a hearing and to determine the appropriate disciplinary measures, with three votes necessary to find a defendant organization guilty. Hearings of the Organization Court are closed to the public at the request of the defendant organization.

----------Footnotes----------

n6 Rule 9 of the Rules of Procedure and Regulations of the Student Judiciary provides:

> Organization Court has jurisdiction over all cases which are assigned to it by the Office of Judicial Programs. Such jurisdiction shall extend to any offenses which may result in revocation, probated revocation, suspension, or probated suspension of the organization's registration with Student Activities. . . .

----------End Footnotes----------

Specific University regulations pertaining to student organizations include prohibitions against: damage to property, disorderly conduct, alcohol and drug misuse, unauthorized entry, gambling, and hazing. The Organization [***6] Court, if it determines a student organization regulation has been violated, may impose the following sanctions: recommendation for charter revocation; revocation of University registration; suspension; restriction; probation; oral reprimand; written reprimand; and community service. The Organization Court "may enlarge upon or modify this list to meet the particular circumstance in any case." n7 Fraternities and sororities are subject to the jurisdiction of the Office of Judicial Programs and the Organization Court throughout the year.

----------Footnotes----------

n7 University of Georgia Conduct Regulations and Procedures to be Followed in Disciplinary Hearings, Student Organization regulations.

----------End Footnotes----------

2. *The Open Records Act*

Georgia's Open Records Act defines "public records," in pertinent part, as:

> all documents, papers, letters, maps, books, tapes, photographs, computer based or generated information, or similar [*850] material prepared and maintained or received in the course of the operation of a public office or agency. [***7] "Public records" shall also mean such items received or maintained by a private person or entity on behalf of a public office or agency which are

> not otherwise subject to protection from disclosure.

O.C.G.A. § 50-18-70 (a). The purpose of the Act

> is not only to encourage public access to such information [so] . . . the public can evaluate the expenditure of public funds and the efficient and proper functioning of its institutions, but also to foster confidence in government through openness to the public.

Athens Observer v. Anderson, 245 Ga. 63, 66 (263 S.E.2d 128) (1980).

The defendants concede, as they must, that the records of the Organization Court are "public records" that, unless exempted, are subject to inspection by the general public under the Open Records Act. Board of Regents v. Atlanta Journal, supra; *Macon Telegraph Pub. Co. v. Bd. of Regents*, 256 Ga. 443 (350 S.E.2d 23) (1986). However, they contend that the records are specifically exempted by virtue of O.C.G.A. § 50-18-72 (a) which provides that public disclosure is not required for records:

> (1) Specifically required by the federal government to be confidential;
>
> (2) [***8] Medical or veterinary records and similar files, the disclosure of which would be an invasion of personal privacy.

The defendants argue that both the above exemptions are triggered by the federal Family Educational Rights and Privacy Act, 20 USC § 1232g, commonly known as the "Buckley Amendment." n8 We disagree.

----------Footnotes----------

n8 The Buckley Amendment provides, in pertinent part:

> (b) (1) No funds shall be made available under any applicable program to any educational agency or institution which has a policy or practice of permitting the release of education records (or personally identifiable information contained therein other than directory information . . .) of students without the written consent of their parents to any individual, agency, or organization. . . . 20 USC § 1232g (b) (1).
>
> * * *
>
> (b) (2) No funds shall be made available under any applicable program to any educational agency or institution which has a policy or practice of releasing, or providing access to, any personally identifiable information in education records other than directory information, or as is permitted under paragraph (1) of this subsection unless
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> . . .
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> * * *
>
> > (B) Such information is furnished in compliance with judicial order, or pursuant to any lawfully issued subpoena, upon condition that parents and the students are notified of all such orders or subpoenas in advance of the compliance therewith by the educational institution or agency. 20 USC § 1232g (b) (2) (B).

----------End Footnotes----------

[***9]

[*851] [**261] First, we have serious questions whether the Buckley Amendment even applies to

the exemptions argued by the defendants since the Buckley Amendment does not prohibit disclosure of records. Rather, as noted by the trial court, the Buckley Amendment provides for the withholding of federal funds for institutions that have a policy or practice of permitting the release of educational records(*Student Bar Assn. Bd. of Governors v. Byrd*, 239 S.E.2d 415, 419 (N.C. 1977); *Tombrello v. USX Corp.*, 763 FSupp. 541, 545-546 (N.D. Ala. 1991); *Bauer v. Kincaid*, 759 FSupp. 575, 589 (W.D. Mo. 1991). Also, we look to the Buckley Amendment's purpose, which was not to grant individual students the right of privacy or access to educational records, but to control the careless release of educational information on the part of many institutions. Id. at 590; *Smith v. Duquesne University*, 612 FSupp. 72, 80 (W.D. Pa. 1985).

However, assuming, without deciding, that the threat of withdrawal of federal funding is equivalent to a prohibition of disclosure (as the defendants argue), we do not believe the documents sought are "education records" within the meaning of [***10] the Buckley Amendment. n9 The documents at issue involve charges of violations of University rules and regulations -- specifically, in this case, hazing charges -- against social fraternities. While the records in question are similar to, they are not the same as, those "maintained solely for law enforcement purposes," which are expressly excluded from the Buckley Amendment's purview. See *Bauer v. Kincaid*, supra. Nevertheless, [*852] the records are not of the type the Buckley Amendment is intended to protect, i.e., those relating to individual student academic performance, financial aid, or scholastic probation. n10 Id. at 591. Further, as noted by the trial court, the Organization Court records are maintained at the Office of Judicial Programs, while "education records" are maintained at the Registrar's Office.

----------Footnotes----------

n9 "Education records" are defined in the Buckley Amendment as:

> (4) (A) Except as may be provided otherwise in subparagraph (B), those records, files, documents, and other material which
>
> > (i) contain information directly related to a student; and
> > (ii) are maintained by an educational agency or institution or by a person acting for such agency or institution.
>
> (B) The term "education records" does not include
>
> > (i) records of instructional, supervisory, and administrative personnel and educational personnel ancillary thereto which are in the sole possession of the maker thereof and which are not accessible or revealed to any other person except a substitute; (ii) if the personnel of a law enforcement unit do not have access to education records under subsection (b) (1) of this section, the records and documents of such law enforcement unit which (I) are kept apart from records described in subparagraph (A), (II) are maintained solely for law enforcement purposes, and (III) are not made available to persons other than law enforcement officials of the same jurisdiction; . . . 20 USC § 1232g (a) (4) (B). [***11]

n10 The trial court in this instance conducted an in camera review of the documents regarding the hazing charges, and specifically found nothing

related to the academic settings, such as grades, test and aptitude scores or financial aid. Indeed, one hazing charge involved an alleged battery against a student which had been investigated by the local police.

----------End Footnotes----------

Moreover, the Buckley Amendment specifically provides that the sanction of loss of federal funding does not occur when the institution furnishes information in compliance with a judicial order. 20 [**262] USC § 1232g (b) (2) (B), fn. 8, supra; *State v. Birdsall*, 568 P2d 1094, 1097 (Ariz. 1977); *Rios v. Read*, 73 F.R.D. 589, 598 (E.D. N.Y. 1977). Thus, because the trial court ordered the records released, the Buckley Amendment cannot trigger either of the exemptions argued by the defendants.

For the foregoing reasons, we conclude the trial court correctly determined the Organization Court records to be subject to the Georgia Open Records Act.

3. *The Open Meetings Act*

The Georgia Open Meetings Act ("Government in Sunshine [***12] Law") provides that "all meetings . . . shall be open to the public," O.C.G.A. § 50-14-1 (b), and applies to "[e]very state department, agency, board, bureau, commission, and authority." O.C.G.A. § 50-14-1 (a) (1) (A).

"Meetings" are defined under the Act as

> the gathering of a quorum of the members of the governing body of an agency or of any committee of its members created by such governing body . . . at a designated time and place at which official business or policy of the agency is to be discussed or at which official action is to be taken. . . .

O.C.G.A. § 50-14-1 (a) (2).

The Act was

> enacted in the public interest to protect the public -- both individuals and the public generally – from "closed door" politics and the potential abuse of individuals and the misuse of power such policies entail.

Atlanta Journal v. Hill, 257 Ga. 398, 399 (359 S.E.2d 913) (1987). We have held that "the Act must be broadly construed to effect its remedial and protective purposes." Id.

[*853] By the Act's express language, the test for its applicability is two-pronged: first, is the meeting one of a "governing body of an agency" or any committee thereof?; and [***13] second, is the meeting one "at which official business or policy of the agency is to be discussed or at which official action is to be taken[?]"

(a) It cannot seriously be contended that the Organization Court does not meet the second prong of the test. That is, it meets to take official action on behalf of the University and the Board of Regents. As noted above, the Organization Court exists and derives its authority to enforce University rules and regulations concerning social fraternities and sororities directly from the Board of Regents. The Board of Regents delegated to the University the formulation of rules and regulations regarding discipline of students and student social organizations. The University, in turn, created the Office of Judicial Programs to handle discipline of students and student organizations. The Organization Court has jurisdiction over all cases assigned to it by the Office of Judicial Programs. Its sessions are held on the University of Georgia

campus, it is funded by University funds, and it is served administratively by staff members of the Office of Judicial Programs, University employees. The Organization Court's very function is to determine [***14] whether a social fraternity or sorority is guilty of violating University rules and regulations. Indeed, it adjudicates claims of serious misconduct, some of which constitute criminal activity under state law. n11 The Organization Court's decisions and sentences are not advisory in any sense, [**263] compare *McLarty v. Bd. of Regents*, supra, but are final and binding unless reversed on appeal. n12

----------Footnotes----------

n11 E.g., damage to property, theft, alcohol and drug misuse, unauthorized entry, and hazing. See O.C.G.A. § 16-5-61. In fact, the trial court found that one of the hazing charges in this case involved an alleged battery against a student which had been investigated by the local police.

The court is run by formal procedural rules, similar to those of trial courts, including: the right to counsel for the defendant, filing of pleadings, notice of hearings, presentation of witnesses under oath, right of cross-examination, burdens of proof (the defendant is presumed innocent and must be proven guilty by clear and convincing evidence), and appeals. Student justices are subject to a code of ethics consisting of ten canons.

The Organization Court's hearings are quite similar to those in criminal cases. We note our state's strong policy against secret criminal trials. Indeed, our constitution *requires* that criminal trials be public. Constitution of Ga. 1983, Art. I, Sec. I, Par. XI. See also *R. W. Page Corp. v. Lumpkin*, 249 Ga. 576 (292 S.E.2d 815) (1982). [***15]

n12 A defendant organization may appeal an

Organization Court decision first to the Student Judicial Council, which is made up of seven students, then to the vice-president for Student Affairs, then to the president of the university, and finally, to the Board of Regents (the last level of appeal is a matter of discretionary review). In fact, witnesses for the state indicated that very few Organization Court decisions are appealed.

----------End Footnotes----------

(b) The defendants contend, and the trial court held, that the Organization Court is not a "governing body of an agency" or any committee of the members thereof within the meaning of the Act. It [*854] is true that the Organization Court does not fit within the literal language of the Act in that it is not a committee of any members of the governing body, i.e., the Board of Regents or the University. Nevertheless, the Organization Court stands in the place of, and is equivalent to the Board of Regents and the University under the Open Meetings Act. The Organization Court, acting with the Office of Judicial Programs, is the *vehicle* by which the University [***16] carries out its responsibility, as directed by the Board of Regents, to regulate social organizations. n13 Simply put, having delegated official responsibility and authority to the Organization Court, the defendants cannot hide behind meetings at which official action is taken on their behalf, and for which they are responsible, by contending that a group of students, none of whom are members of the Board of Regents, is taking that action.

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n13 The Organization Court is far different from most of the student groups on campus, e.g., glee clubs, language clubs, etc. The University would be unlikely to take any action if any of these groups disbanded. However, if the Organization Court

were to abdicate its powers for any reason, the University would be *required* to step in to establish another method to regulate social organizations.

----------End Footnotes----------

We are mindful that openness in sensitive proceedings is sometimes unpleasant, difficult, and occasionally harmful. Nevertheless, the policy of this state is that the public's [***17] business must be open, not only to protect against potential abuse, but also to maintain the public's confidence in its officials. *Athens Observer v. Anderson*, supra. n14

----------Footnotes----------

n14 In fact, there may be legitimate reasons for closing Organization Court hearings to the public. However, the authority for this, or any other exception to the Open Meetings Act must come from the General Assembly.

----------End Footnotes----------

For the foregoing reasons, we hold that the trial court erred in concluding that the hearings of the Organization Court are not subject to the Open Meetings Act and can be held in secret. n15

----------Footnotes----------

n15 The plaintiffs do not seek access to the deliberations of the Organization Court justices, which, of course, would not be open to the public, any more than would jury deliberations.

----------End Footnotes----------

4. *President Knapp*

We agree with the plaintiffs that the trial court erred [***18] in dismissing President Knapp as a defendant. He is the executive head of the University of Georgia and its departments. By virtue of that position, and because of the Board of Regents' mandate that the University formulate rules and regulations pertaining to students and student social organizations, President Knapp necessarily is responsible for procedures involving those rules and regulations. Accordingly, he is a proper party defendant. See *Macon Telegraph Pub. Co. v. Bd. of Regents*, supra, 256 Ga. at 445.

Judgment affirmed in Case No. S92X1112. Judgment reversed in Case No. S92A1111.